Rule 15, Ariz. R. Crim. P., discovery

STATE'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL DISCOVERY

A trial court may deny a request for disclosure if it is based primarily on "mere conjecture" and "defense assertions."

Pursuant to Rule 15.1, Arizona Rules of Criminal Procedure, the State asks this Court to deny the defendant's Motion to Compel Discovery, based on the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. The Facts:

Defense counsel for defendant Carlton Boddie is requesting a copy of the contents of the "telephone/business card book" belonging to victim (Name) (hereinafter referred to as "the book"). The book consists of forty-four pages, including eighty-five business cards. The police impounded the book during their investigation. In accordance with Rule 15.1(a), Arizona Rules of Criminal Procedure, the State has provided the defense with all discoverable information. The State will not introduce the contents of the book into evidence at trial.

II. The Law:

Defense counsel has shown no need at all for the contents of the book, let alone any substantial or compelling need for that information under Rule 15.1(e), Ariz. R. Crim. P. The book contains no "material or information which tends to mitigate or negate the defendant's guilt as to the offense charged, or which would tend to reduce the defendant's punishment therefor." Rule 15.1(a)(7), Ariz. R. Crim. P. In *State v. Hatton*, 116 Ariz. 142, 568 P.2d 1040 (1977), the defense requested disclosure of any police reports that might have existed

concerning disturbances at the crime scene the previous year, as well as rap sheets on any persons involved in any such possible disturbances. The *Hatton* court held that the trial court correctly refused to order the disclosure, stating, "Mere conjecture without more that certain information might be useful as exculpatory evidence is not sufficient to reverse a trial court's denial of a request for disclosure. "*Id*. at 150, 568 P.2d at 1048 (1977). The *Hatton* court concluded, "Discovery rules are not meant to be used for 'fishing expeditions.'"" *Id*. Similarly, in *State v. Cordova*, 198 Ariz. 242, 8 P.3d 1156 (App. 1999), the defendant committed an armed robbery at a convenience store, and the clerk told police the robber was a regular customer of the store. An anonymous "crime stop" caller told the police that a gang member nicknamed "Turtle" had done the robbery. The police located eight gang members with that nickname; Cordova was one of them. Because Cordova lived near the store, the police put his picture in a photo lineup from which the clerk identified him as the robber. Cordova claimed that he was entitled to information about the anonymous telephone call and the names and addresses of all of the gang members known as "Turtle." He argued that the investigating officer could have been the source of the tip and he could have used that information to cross-examine the officer. The Court of Appeals rejected this argument, noting that Cordova had failed to provide any support for his theory, and that even if he had, it was immaterial. Thus, Cordova was not entitled to the information he sought. *Id*. at 244, ¶¶ 8-9, 8 P.3d at 1158.

In this case, defense counsel is also embarking on a fishing expedition by asking the State to disclose to him all of the contents of the book. It is pure speculation to posit that the victim disclosed anything about the offense to anyone whose name appears in the book. Additionally, contacting eighty-five of the victim's business associates on the grounds

that the victim **might** have spoken to one or more of them about the violent sexual assault she endured, would violate the victim's "right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment, or abuse." Rule 39(b)(1), Ariz. R. Crim. P. The victim may have chosen not to tell her business associates that she had been sexually assaulted. For the defense to inform them of that would violate the victim's right to privacy and cause her humiliation and embarrassment among her peers.

In *State v. Piper*, 113 Ariz. 390, 392, 555 P.2d 636, 938 (1976), the defendant argued on appeal that the trial court erred in "failing to require the victim to reveal on cross-examination at trial the names of his companions in the hours preceding the robbery and beating incident." The defendant argued that knowledge of the victim's companions before the robbery could have revealed potential witnesses who might have given testimony regarding the victim's sobriety and his ability to observe and remember. The Court of Appeals affirmed the trial court's order, stating:

> Where there is no evidence, beyond defense assertions, insinuations and speculation, that the prosecution witness was drunk, under the influence of drugs, or otherwise incapacitated, the trial court's failure to order the witness to produce names of persons he was with earlier in the evening before the robbery was not an abuse of discretion.

Piper, 113 Ariz. at 392, 555 P.2d at 638.

Likewise, the prosecution in the instant case is being asked to disclose the contents of the victim's book so that the defense is able to contact *potential* witnesses who *might* have spoken with the victim about the assault. The defense's request is based on nothing more than "assertions, insinuations and speculation." *Piper*, *id*. Therefore, the defense is not entitled to disclosure of the book's contents.

If the Court so orders, the State asks this Court to review the book *in camera*, so this

Court may independently determine that the contents of the book have no exculpatory or evidentiary value whatsoever.

Conclusion

For the foregoing reasons, the State respectfully requests that this Court deny the defense's Motion to Compel Discovery.